BellSouth

October 9, 1996

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996	)	CC Docket No. 96-187
	)	
	)	

COMMENTS

BELLSOUTH CORPORATION
BELLSOUTH TELECOMMUNICATIONS, INC.

M. Robert Sutherland
Richard M. Sbaratta

Their Attorneys

Suite 1700
1155 Peachtree Street, N.E.
Atlanta, Georgia 30309-3610
(404) 249-3386

Date: October 9, 1996

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SUMMARY

Section 204(a)(3) establishes a statutory right for all LECs to file their interstate tariffs on a streamlined basis. The statutory provision is broad in scope. It encompasses all LECs, incumbents and new entrants alike, and applies to all LEC tariff filings.

In contrast to the process that applies to tariff filings of other common carriers, Section 204(a)(3) establishes a special process for LEC tariff filings whereby such filings can be adjudged lawful by operation of the statute without any need for a regulatory hearing and determination. If the Commission does not exercise its discretion to suspend and investigate a LEC tariff filing, then the statute deems the filing to be lawful upon its effectiveness.

Once a tariff filing becomes effective and is lawful under Section 204(a)(3), there is nothing left for the Commission to review. The filing's lawfulness is a legislative determination made by Congress which the Commission cannot disturb.

The Commission should refrain from adopting and imposing on streamlined filings' new regulatory requirements. The types of requirements being considered by the Commission, such as additional summaries and special legal analyses, if not inconsistent with the letter of the law, certainly are contradictory to the spirit and intent of the law. The Commission should be focusing on ways to reduce regulation, not add to it. Creating rules that will encumber or add burdens to the filing process is at odds with the concept of streamlining regulation that is advanced by the enactment of Section 204(a)(3). Furthermore, the addition of rules and regulations that expand regulatory processes are not consistent with the pro-competitive environment that the Telecommunications Act intended to enhance. Nor should the Commission overlook the fact that

Section 204(a)(3) applies to all LECs, incumbents and new entrants alike. For the Commission to establish new regulations regarding LEC streamlined filings will most certainly add to the cost of doing business for all competitors. This result, together with the specter of heavy-handed regulation that the Commission proposals foreshadow, will likely chill the competitive environment.

To implement Section 204(a)(3), the Commission should make certain administrative changes to their rules. It should modify Section 61.33 of its rules to require transmittal letters accompanying a streamlined filing to include the name, address and facsimile number of the person designated by the filing carrier to receive personal or facsimile service of petitions against a filing. In addition, the Commission should modify Section 1.773 of its rules to address filing and service of petitions against streamlined filings and replies thereto.

Another administrative change worthy of further consideration is the development of an electronic filing program. Any such program must be viewed in the context of workflow processes, equipment requirements as well as issues concerning cost, security and administration. Unless these considerations are taken into account, the anticipated benefit of an electronic filing program will not be realized.

It is clear that the outcome of this proceeding should be a reduction in the rules and regulations under which LECs are currently required to operate. In no event does implementation of Section 204(a)(3) require or contemplate new regulations that increase regulatory burdens to be imposed on LECs simply because they file a tariff with the Commission. Because the new statutory provision streamlining LEC tariff filings applies to all LECs, the policies embodied in the Telecommunications Act that encourage local exchange competition will only be successful if

accompanied by the removal of regulatory rules that inhibit the operation of the marketplace. Hence, the Commission not only must adhere to the letter of the Telecommunications Act, but also to its spirit and take the steps that move in the direction toward deregulation. The LEC streamlining provisions afford the Commission an immediate opportunity to bring the pro-competitive goals of the Telecommunications Act into practice.

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BellSouth Corporation and BellSouth Telecommunications Inc. ("BellSouth") hereby submit their comments on the Notice of Proposed Rulemaking released on September 6, 1996.

I. INTRODUCTION

The Telecommunications Act of 1996 added a new Section 204(a)(3) to the Communications Act which provides for streamlined regulation of local exchange carriers ("LECs"). Specifically, the new statutory provision permits all LECs to file new or revised charges, regulations, classifications, or practices on a streamlined basis. Under the terms of the Act, such filings shall become effective after a limited notice period and shall be deemed lawful, unless the Commission acts under Section 204(1) to suspend and investigate the tariff filing.

This new provision represents an important and integral part of a new statutory paradigm the purpose of which is "to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition."[1] It demonstrates that achievement of this objective

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[1] Joint Statement of Managers, S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. Preamble (1996) (Joint Explanatory Statement).

is not limited to creating opportunities for new entry into telecommunications markets. Equally important is the removal of regulatory impediments and constraints that inhibit and interfere with the operation of the marketplace.

It is significant to note that as to all common carriers, Congress has given the Commission the power to forbear from regulation as an approach toward deregulation, but such forbearance requires Commission action. In addition to the prospect of forbearance, Congress took a first step to reduce the Commission's regulation of LECs. The Act singles out LECs as a class of carrier and establishes for them a streamlined regulatory process that becomes effective automatically. This immediate and nondiscretionary streamlined regulation is a complement to the new interconnection rules that open the local exchange markets to full competition.

II. STREAMLINED REGULATION

The Commission's purpose in this proceeding is to identify ways in which to streamline LEC tariff filings in accordance with the statute. In addition to proposing a variety of actions intended to implement the statute, the Commission suggests certain administrative reforms that would streamline discretionary Commission processes. The sum effect of the proposed actions should be furtherance of the overall objective of the Telecommunications Act of establishing a pro-competitive, deregulatory framework for the telecommunications industry.

At the outset, it should be without question that, by the end of this proceeding, the Commission should have reduced the rules and regulations under which LECs are currently required to operate. In no event does implementation of the Telecommunications Act require or contemplate new regulations that increase regulatory burdens imposed on LECs simply because they filed a tariff with the Commission. Because the new streamlined provisions of the

Telecommunications Act apply to all LECs (new and incumbent), the new policies embodied in the Telecommunications Act that encourage local exchange competition will only be successful if accompanied by the removal of regulatory rules that inhibit the operation of the marketplace. Hence, the Commission not only must adhere to the letter of the Telecommunications Act, but also to its spirit and take the steps that move in the direction of deregulation. The LEC streamlining provisions afford the Commission an immediate opportunity to bring the pro-competitive goals of the Telecommunications Act into practice.

A. The Specific Requirements Of Section 204(a)(3) Create A New Paradigm For LEC Tariff Filings

Section 204(a)(3) permits LECs to file tariffs on seven and fifteen days notice. While this provision affords LECs the discretion to file tariffs with longer notice periods, it changes the Commission's authority regarding notice periods for LEC streamlined filings. As the Commission observes in the Notice,[2] Section 203(b) of the Communications Act sets forth a 120 day notice period for common carrier tariff filings,[3] but also confers upon the Commission the discretion to shorten the notice period for specific filings or by order of general applicability.[4] The streamlined notice provisions for LEC tariff filings set forth in Section 204(a)(3) supplant the general

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2 Notice at ¶ 6.

3 Section 203(b)(1) provides :

> No change shall be made in the charge, classifications, regulations, or practices which have been so filed and published except after one hundred and twenty days notice to the Commission....

4 Section 203(b)(2) provides:

> The Commission may, in its discretion and for good cause shown, modify any requirement made by or under the authority of this section either in particular instances or by general order applicable to special circumstances or conditions except that the Commission may not require the notice period specified in paragraph (1) to be more than one hundred and twenty days.

authority of Section 203. Indeed, the discretion regarding notice periods conferred upon the Commission only pertains to requirements "made by or under the authority of this section [Section 203]." Because the streamlined notice requirements are not created by Section 203, the Commission cannot rely on the discretionary authority contained in that Section to lengthen the streamlined notice requirements. Hence, the Commission's tentative conclusion that "Congress intended to foreclose Commission exercise of its general authority under Section 203(b)(2)" is correct.[5]

Section 204(a)(3) further provides that LEC tariff filings "shall be deemed lawful" and "shall be effective" at the end of the notice period unless the Commission acts upon its authority to suspend and investigate the tariff. The Commission tentatively concludes that the provision's "deemed lawful" specification changes the regulatory treatment of LEC filings and solicits comments regarding how that new provision operates to do so.[6]

Without a doubt, Section 204(a)(3) substantially alters the regulatory paradigm for LEC tariff filings. Prior to the provision's enactment, common carrier-filed tariffs could take effect without commission action. Such tariffs established the legal charges that the carrier had to collect from customers. Common carrier tariffs could be challenged as unlawful unless an express Commission determination had been entered after a hearing held pursuant to Sections 204 and 205 or Section 208 of the Communications Act.

Section 204(a)(3) establishes a distinct approach for LEC filings whereby such filings can be adjudged lawful by operation of the statute without any need for a regulatory hearing and

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5 See Notice at ¶ 6.

6 Notice at ¶¶ 7-8.

determination. If the Commission does not exercise its discretion to suspend and investigate a LEC tariff filing, then the statute deems the filing to be lawful upon its effectiveness.[7] As the Commission notes, the term "deemed" has the same meaning as adjudged or determined.[8] In other words, the statute confers upon the LEC filing the same status that heretofore could only be acquired through a Commission determination or adjudication.

To the extent that the Commission believes that the status of lawfulness that is conferred as a result of a Commission determination is somehow greater than the lawfulness acquired by operation of Section 204(a)(3), the Commission's belief is incorrect. The primary purpose of Congress in enacting the Telecommunications Act was to establish a pro-competitive, deregulatory framework for telecommunications. The essence of deregulation is the absence of a regulatory agency's intervention in the operations of telecommunications carriers. Section 204(a)(3) is Congress' expression that, for LECs, the framework it has established through the Telecommunications Act obviates the need for regulatory intervention and scrutiny before lawfulness attaches to a tariff filing.

Equally significant, once the statute confers upon the LEC filing the status of lawfulness, it displaces regulation as the means of oversight, at least for the relevant charges, practices and classifications, with the operation of the marketplace. Hence, if the tariff takes effect and is

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[7] A Commission decision not to suspend and investigate LEC filings made pursuant to Section 204(a)(3) would constitute final Commission action subject to judicial review.

[8] See Notice at ¶ 10.

deemed lawful by operation of the statute, the Commission is foreclosed from then finding the tariff to be unlawful retroactively and award damages.[9]

The Commission appears to believe that a tariff deemed lawful under the statute is not "equivalent to a finding of lawfulness based on a complete record."[10] The Commission goes on to suggest that the Commission review of a complaint challenging an LEC tariff that had become effective without suspension and investigation within 7/15 days, would present a case of first impression and the Commission would not be limited in any respect by previous decisions concerning the tariff."[11] The Commission implies that LEC tariffs that become effective without an agency determination of lawfulness would be distinguishable from Arizona Grocery , and thereby the Commission's ability to award damages would not be limited.

The Commission appears to make this supposition on the basis that no agency determination would be involved, and, hence, Arizona Grocery would be distinguishable. The Commission misses the fact that in Arizona Grocery, the Supreme Court found the agency in prescribing a lawful rate was acting in a legislative capacity. As the Supreme Court explained:

> If by Act of Congress maximum rates were declared lawful for certain classes of service, neither carrier nor shipper could thereafter draw into question in the courts the conduct of the other if it conformed to the legislative mandate.... By the amendatory legislation Congress has delegated to the Commission as its administrative arm its undoubted power to declare, within constitutional limits, what are lawful rates for the service to be performed by the carriers. The action of the Commission in fixing such rates for the future is subject to the same tests as to

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9 The Commission recognizes that once a rate is determined to be lawful, an agency may not retroactively subject the carrier to reparations. Arizona Grocery Co. v. Atchison, T. & S.F., 284 US 370 (1932) (Arizona Grocery).

10 Notice at ¶ 11.

11 Id.

its validity as would be an act of Congress intended to accomplish the same purpose.[12]

In the amendatory legislation contained in the Telecommunications Act, Congress has acted. It did not delegate its power to the Commission. Instead, Congress, through enactment, established the condition for lawful tariffs. In these circumstances, where the LECs' conduct conforms to the legislative mandate, such conduct cannot subsequently be challenged.

The Commission suggests an alternative construction of Section 204(a)(3) such that "deemed lawful" would not change the status of LEC tariffs that became effective without suspension or investigation, but instead would merely impose a higher hurdle before the Commission would suspend and investigate.[13] Such a construction must fail. It would effectively rewrite the statutory provision. It would negate the provision's express words and substitute an implied regulatory standard of the Commission's creation.[14]

The Commission notes that any interpretation of "deemed lawful" must be consistent with the other provisions of the Communications Act, in particular Sections 201-205.[15] No inconsistency arises by a statutory provision that confers lawful status upon a tariff filing. Lawful, under the Communications Act, means reasonable. Hence, a tariff that is lawful is, by definition, just and reasonable and, thus, the standard of Title II of the Communications Act is satisfied.

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12 Arizona Grocery, 284 US at 388.

13 Notice at ¶ 12.

14 Prior to the Telecommunications Act, the Commission established its own streamlined procedures for particular types of filings and classes of carriers. Certainly, the Commission should follow such streamlined provisions with regard to LEC tariff filings for which Congress has mandated a streamlined regulatory process.

15 Notice at ¶ 13.

B. All LEC Tariff Filings Can Be Made On A Streamlined Basis

The Commission solicits comment on the types of LEC tariff filings that would be eligible for streamlined treatment. The plain language of the act is clear that all tariff filings are subject to streamlined treatment:

> A local exchange carrier may file with the Commission a new or revised charge, classification, regulation, or practice on a streamlined basis.[16]

Nothing in the language of the statute limits the types of filings that may be filed on a streamlined basis.

The Commission questions whether the provision could be construed to apply only to existing services.[17] There is but one response--no. The statute contains no such limiting language. Indeed, the term "existing services" appears nowhere in the provision. In contrast, the terms which the statute does use are the same terms that are found in all other provisions of Title II--charges, classifications, regulations and practices. These terms encompass all tariff filings, whether related to existing services or new services. In sum, Section 204(a)(3) is unambiguous. Any attempt by the Commission to interpret the provision as containing a limitation will fail. The Commission cannot change a statute under the guise of interpreting one of its provisions.

III. STREAMLINED ADMINISTRATION OF LEC TARIFFS

A. Electronic Filings

An administrative simplification that the Commission proposes is the electronic filing of tariffs. BellSouth supports the Commission's effort to create a program for the electronic filing of tariffs and associated documents. The program envisioned by the Commission, however, is not

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16 47 U.S.C. 203 (a)(3).

17 Notice at ¶ 18.

simply replacing printed paper documents with digital documents. Any such program must be viewed in the context of workflow processes, equipment requirements as well as issues concerning cost, security and administration. If these considerations are not taken into account, the anticipated benefit of an electronic filing program will not be realized.

Any proposed system should not require LECs or the Commission to radically change the manner in which they operate. Nor should the system impose significant changes in the hardware or software that is being used by the Commission or the LECs.[18] The system must be secure and be capable of protecting commercially sensitive and other confidential information that might accompany a tariff filing. The system's requirements should not impose significant administrative duties on either the Commission or the LECs. The system should allow easy access to the public via the internet for document retrieval. Finally, whatever system is developed, it must be cost effective.

Given these general considerations, BellSouth believes a system based on a mail-in database would be preferable. This process should use the Internet or any electronic mail provider to transmit the filings. Use of a mail-in database on the Internet, information would accomplish a number of things: 1) it would enable the recording of transmission information and receipt of the filing; 2) the filing could be date stamped at both ends of the transmission; 3) a mail-in database would be available twenty-four hours a day limiting the potential for congestion; 4) the integrity of the filing could be maintained through the use of a data compression utility which

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[18] For example, the system should not be wedded to proprietary software standards that might jeopardize the longevity of the system. Likewise, the system must be able to accommodate documents produced through a wide variety of applications (i.e., other than word processing applications). Further, the document format for electronic filing should be able to accommodate a variety of computer platforms.

has a built-in records check device similar to a CRC check; and 5) the filing could be sent as an archive file, and then, broken down into component parts (e.g., tariff pages, description and justification, cost support, confidential material).

BellSouth would propose that the Commission consider adopting the Adobe Acrobat Portable Document Format (PDF) format for documents to be transmitted to the mail-in database. The PDF format can be accommodated by a wide variety of platforms and the software to create such documents is relatively inexpensive.[19] Use of the PDF format can easily be incorporated into most document preparation workflow processes. In addition, use of the PDF format should minimize equipment and software costs associated with implementing an electronic filing system. Equally important, the PDF format permits controlled access to the material in a document by password protection. Separate parts of a document can be made available to certain individuals, but not to others.

While BellSouth believes the framework described above provides a foundation for an electronic filing system, implementation of such a system is complex. Certainly a dialog between the Commission and industry members would be useful in developing a final program. Any program, however, should include a phase-in plan that would provide a reasonable transition for all participants to become familiar with the system, its tools and methods. It would also enable participants to discover and remedy any technical difficulties that may be present.

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[19] Other benefits to the PDF format are: PDF documents use sophisticated compression techniques which minimize storage requirements and transmission times; a PDF document can accommodate thousands of pages into a single document; electronic links can be built into PDF documents; RSA encryption and/or simple password security are built-in features of PDF documents; and the PDF format is an open, published format specification and is accessible to the public at a reasonable cost.

B. Post-Effective Tariff Reviews

The Commission solicits comment on whether it should adopt a "policy of relying exclusively on post-effective tariff review, at least for certain types of tariff filings..."[20] Before commenting on the specific issue, a general observation is warranted. The nature of the Commission's inquiry appears to be contradictory to the overall objectives of the Telecommunications Act and the specific purpose of the LEC streamlining provision. Rather than evidencing the deregulatory focus of Congress, the Commission appears to be searching for new regulatory processes that will interject the Commission into the tariff process and negate the market-oriented approach that statutory streamlining would create.

Apart from the general incongruence of a post-effective review policy with the pro-competitive and deregulatory objectives of this provision, such a policy would be inconsistent with the express language of the provision. Section 204(a)(3) provides that a LEC filing shall become effective and be deemed lawful unless the Commission acts, pursuant to its authority under Section 204(a)(1), to suspend and investigate. Section 204(a)(1) does not permit the Commission to suspend an effective filing nor does it permit the Commission to investigate the lawfulness of an effective filing that has, by operation of the statute, been determined to be lawful.

Further, once a tariff filing becomes effective and is lawful, there is nothing left for the Commission to review. The filing's lawfulness is a legislative determination made by Congress which the Commission cannot disturb. Accordingly, a review of the tariff filing after it has become effective serves no purpose.[21]

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[20] Notice at ¶ 23.

[21] The possibility that a tariff will contravene a lawful Commission rule or regulation is highly unlikely. Even if such an unlikely event should occur, the Commission will not need post

C. Pre-Effective Tariff Review of Streamlined Tariff Filings

Unfortunately, in implementing a new deregulatory provision, the Commission takes the course of identifying new regulations and procedures. It proposes to implement new regulatory requirements that would constitute additional, rather than reduced, regulation. If not inconsistent with the letter of the law, such an approach certainly ignores the intent and spirit of the law.

First, the Commission proposes to adopt a new requirement that the LECs file a summary with its tariff filing that would be in addition to the summary of the filing's basic rates, terms and conditions that is already required by the Commission's rules.[22] It is difficult to conceive of a circumstance where the existing documentation would be enhanced by another summary requirement. At most, adopting such a requirement would be the height of regulatory redundancy.

Next, the Commission proposes to create a new regulation that would require LECs filing tariffs on a streamlined basis to include an analysis that would show that the filing is lawful under applicable rules. In essence, such a requirement amounts to little more than requiring a LEC to prove a negative--virtually an impossible task. What legal analysis is necessary or could be used to show that the tariff pages are formatted and coded in accordance with Part 61 of the rules?

Every tariff filing made by a common carrier must be made be in good faith and in compliance with all outstanding Commission rules and regulations. Nothing in Section 204(a)(3)

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tariff review to become aware of any conflict. There are more than enough adversaries that will advise the Commission of every suspected inconsistency. The Commission has sufficient prospective processes (e.g., declaratory ruling) and remedies (notice of apparent liability) to address any situation that might arise.

22 See 47 C.F.R. § 61.33(b)(1).

modifies these basic principles.[23] The Commission's proposal implies that the streamlining of LEC tariff filings somehow affords LECs opportunities to violate the Commission's rules and also implies that the LECs would engage in such conduct. Such implications are absurd, but, in any event, were such conduct to occur, it would subject the LEC to fines and forfeitures for a willful violation of the Commission's rules and regulations.

The Commission does not need a prophylactic measure for an imaginary problem, particularly where the measure is re-regulatory and contrary to pro-competitive principles that the Commission claims to champion. Creating rules that will encumber the filing process or add burdens to the filing process is at odds with the concept of streamlining regulation that is advanced by the enactment of Section 204(a)(3). Nor is the addition of rules and regulations that expand regulatory processes consistent with the pro-competitive environment that the Telecommunications Act is intended to enhance. Section 204(a)(3) applies to all LECs, incumbents and new entrants alike. For the Commission to establish new regulations regarding LEC streamlined filings will most certainly add to the cost of doing business for all competitors. Moreover, the additional specter of heavy-handed regulation that the Commission's proposals foreshadow will likely chill the competitive environment.

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[23] While nothing in Section 204(a)(3) relieves LECs from complying with Commission rules and regulations, the Commission's rules and regulations, to be lawful, may not frustrate or contradict the new statutory paradigm established for LECs by Section 204(a)(3). Accordingly, the Commission is not free to enact or enforce any rule that would prevent a LEC from filing a new or revised charge, classification, practice or regulation on a streamlined basis. Commission rules, for example, that explicitly require or have the effect of requiring a LEC to seek Commission permission to make a tariff filing, by waiver or otherwise, would contradict the Congressional mandate in Section 204(a)(3).

The Commission should not focus on rules that stop or inhibit LEC tariff filings, such as creating presumptions of unlawfulness. Such rules amount to little more than regulatory attempts to micromanage the telecommunications industry in general and the operations of the LECs in particular. Instead, the Commission should seek ways that permit the marketplace to operate to create the economic checks and balances that will establish incentives for investment, innovation and competition.

D. Notice Periods For Streamlined Filings

In the Notice, the Commission raises several administrative questions regarding the calculation of the notice period for streamlined filings and the timing of associated filings such as petitions to suspend and reject such filings. As an initial matter, the Commission notes that a single tariff filing may contain both rate increases and decreases. In such instances, the Commission proposes that the 15 day notice period associated with rate increases apply to the tariff filing. The Commission's proposal is reasonable.[24] As the Commission notes, if the LEC wanted to avail itself of the shorter notice period for rate decreases, it could separate the rate increases and decreases into separate filings. Such an approach would be workable from an administrative standpoint for both the LEC and the Commission.

The Commission also proposes that the LEC identify transmittals that are filed under Section 204(a)(3) and indicate the notice period. The best means of achieving the notification would be in the transmittal letter. The letter could include a statement that the filing is being made pursuant to Section 204(a)(3) on 7/15 days notice.

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[24] The Commission also tentatively concluded that the 7/15 day notice period set forth in Section 204(a)(3) means calendar days. The Commission's tentative conclusion is correct.

Section 1.773 of the Commission's rules contain the time period in which petitions against tariff filings and their related responses are due. The Commission proposes to amend those rules for LEC filings made on a streamlined basis to require petitions to be filed within 3 days following the filing of the tariff and replies to be filed 2 days after service of the petition. The Commission also proposes to require hand-delivery of all petitions and replies to affected parties.

With regard to establishing a new notice period for LEC streamlined filings, the Commission's proposed time periods appear reasonable. The Commission, however, need not create from whole cloth new rules regarding service of petitions and replies. Minor modifications to existing rules are all that is necessary. Section 61.33 of the Commission's rules currently requires the transmittal letter of any tariff filing made on less than 15 days notice to include the name and address and facsimile number of the person designated by the filing carrier to receive personal or facsimile service of petitions against a filing. The Commission should amend this rule to apply to streamlined filings made on 15 days notice or less. Section 1.773(a)(4) of the Commission's rules already requires that petitions against a filing made on less than 15 days notice be served personally or by facsimile (to the individual designated by the filing carrier). This rule should also be amended to encompass streamlined tariffs filed on 7 or 15 days notice.[25]

Because the Commission's rules do not provide for any pleadings beyond the filing of the carrier's reply, there is no urgency to serving the reply. Nevertheless, if the Commission concludes that fairness requires expedited service of the reply, then the Commission should

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[25] BellSouth's proposed rule changes are set forth in Attachment A.

require petitioners to include a facsimile number in the petition and permit responding carriers to serve the replies personally or by facsimile to the individual who signed the petition.[26]

E. Confidential Treatment of Supporting Materials For Streamlined Filings

An aspiration that the Commission should have is to remove the requirements for supporting materials for LEC streamlined filings, as is currently the case for those filings that are designated by the Commission for streamlined regulatory treatment. The core objective of streamlined regulation, whether Commission established or Congressionally established, is to reduce regulation and encourage the operation of the marketplace. This objective cannot be realized by an approach requiring cost and other materials to accompany a tariff filing, particularly where the origin of that approach was in a non-competitive, monopoly-based regulatory environment.

Nevertheless, if the Commission delays in removing these regulatory rules, the Commission must be concerned with the confidentiality of competitively sensitive economic and financial information that is provided to the Commission in the context of tariff filings. In GC Docket No. 96-55, this specific issue is being considered. In that proceeding, BellSouth filed comments jointly with several other parties and suggested an approach that would establish a nondisclosure policy based on release of confidential information pursuant to a protective agreement.[27] BellSouth urges the Commission to complete GC No. Docket 96-55 and adopt the approach proposed by the Joint Parties.

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[26] Section 1.773(a)(4) already requires that any party that serves a petition by facsimile must also send a copy of the petition by mail. A similar follow-up requirement could be adopted for replies served by facsimile.

[27] Comments of Ameritech, The Bell Atlantic Telephone Companies, Bell Communications Research, Inc., BellSouth Corporation, NYNEX Corporation, Pacific Bell and Nevada Bell, and

F. Annual Access Tariff Filings

The Commission correctly notes that the annual access tariff filings, currently made on 90 days notice, will be subject to the streamlined provisions of Section 204(a)(3). The Commission, however, is proposing that price cap LECs be required to file the TRP, which normally accompanies the annual price cap filing as supporting information, prior to the annual filing being made. The Commission would require the LECs to update the various price cap constraints with the exception of proposed rates. Such a requirement is unnecessary and would be wasteful. Without proposed rates, neither the Commission nor anyone else can evaluate the price cap constraints or a LECs compliance with the price cap rules. Further, certain exogenous changes, such as NECA Long Term Support, cannot be calculated until preliminary rates have been calculated. In as much as the TRP would have to be recalculated when the annual filing is actually made, an advance filing of a TRP would have no value regarding the rates filed with the annual filing.

Moreover, it is questionable whether the Commission can require the LECs to file the TRP in advance of its tariff filing. The TRP is information that supports a specific tariff filing. It has no significance apart from the tariff filing that it supports. By requiring the information to be filed in advance of the tariff filing, the Commission is effectively extending the notice period of the tariff filing. Such Commission action would contravene Section 204(a)(3).

US West, Inc. (the Joint Parties), GC Docket No. 96-95, Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission, June 14, 1996.

G. Investigations

The Commission requests comments on the issue of whether it should establish procedural rules regarding tariff investigations. Notwithstanding the five month period in which the Commission must complete its tariff investigations, it would appear inappropriate at this juncture to establish procedural rules concerning matters such as page limitations and pleading cycles. Clearly the most influential factor on these matters will be the particular issues designated for investigation. It would seem that, at least initially, the Commission should retain some flexibility. Pleading cycles and other procedural conditions should be established at the time it defines the issues to be investigated, such that the procedures are related to the complexity of the matters being investigated. In this way, the Commission can be assured that it is affording the affected LEC of procedural due process.

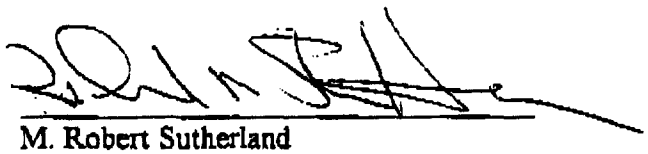
IV. CONCLUSION

Section 204(a)(3) streamlines the regulatory process exclusively for LEC tariff filings. It is the regulatory complement to the new openness in telecommunications markets brought into being by the Telecommunications Act of 1996. The promised benefits of competition can only be realized if outdated and unnecessary regulatory processes and rules are removed. Congress took the first step in that direction in enacting Section 204(a)(3). Implementation of this provision does not require a new series of rules and regulations to constrain LECs. Instead, consistent with

Congress' competitive initiative in enacting Section 204(a)(3), the Commission should remove the barriers that its rules create that prevent the marketplace from functioning free of regulatory distortions.

Respectfully submitted,

BELLSOUTH CORPORATION
BELLSOUTH TELECOMMUNICATIONS, INC.

By: 

M. Robert Sutherland
Richard M. Sbaratta

Their Attorneys

Suite 1700
1155 Peachtree Street, N. E.
Atlanta, Georgia 30309-3610
(404) 249-3386

Date: October 9, 1996

ATTACHMENT A

47 C.F.R. Section 1.773(a)(2) is amended as follows:

1.773(a)(2)(i-iv) shall be redesignated as 1.773(a)(2)(ii-v), and a new 1.773(a)(2)(i) created as follows:

1.773(a)(2)(i) ***Petitions seeking investigation, suspension or rejection of a new or revised tariff filing made on a streamlined basis on 7 days or 15 days notice shall be filed and served within 3 days after the date of the tariff filing. "Streamlined basis" refers to any filings made pursuant to Section 204(a)(3) of the Communications Act.***

47 C.F.R. Section 1.773(a)(4) is amended as follows:

47 C.F.R. Section 1.733(a)(4) *Copies, service.* An original and four copies of each petition shall be filed with the Commission, as follows: the original and three copies must be filed with the Secretary, FCC, room 222, 1919 M Street, NW, Washington, DC 20554; one copy must be delivered directly to the Commission's Copy Contractor, room 246, 1919 M Street, NW, Washington, DC 20554. Additional, separate copies shall be served simultaneously upon the Chief, Common Carrier Bureau and the Chief, Tariff Division. Petitions seeking investigation, suspension, or rejection of a new or revised tariff filing made on less than 15 days notice, **or *made on a streamlined basis on 7 days or 15 days notice***, shall be served either personally or via facsimile on the filing carrier. If a petition is served via facsimile, a copy must also be sent to the filing carrier via first class mail on the same day of the facsimile transmission. Petitions seeking investigation, suspension, or rejection of a new or revised tariff filing, ***other than a streamlined filing***, made on 15 or more days notice may be served on the filing carrier by mail.

47 C.F.R. Section 1.773 (b)(1) is amended as follows:

1.773(b)(1)(i-v) shall be redesignated as 1.773(b)(1)(ii-vi), and a new 1.773(b)(1)(i) created as follows:

1.733(b)(1)(i) ***Replies to petitions seeking investigation, suspension, or rejection of a new or revised tariff filing made on a streamlined basis on 7 days or 15 days notice shall be filed within 2 days after the date the petition is due to be filed with the Commission.***